



State of Utah

GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

Office of the Governor  
PUBLIC LANDS POLICY COORDINATION

JOHN HARJA  
Director

May 11, 2010

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE, Room 1A  
Washington, DC 20426

Subject: OEP/DG2E/Gas 1  
Kern River Gas Transmission Company/Apex Expansion Project  
Docket No. CP10-14-000  
RDCC Project No. 20161

Dear Kimberly D. Bose:

The State of Utah, through the Public Lands Policy Coordination Office (PLPCO), has reviewed this project. Utah Code (Section 63J-4-601, *et. seq.*) designates PLPCO as the entity responsible to coordinate the review of technical and policy actions that may affect the physical resources of the state, and to facilitate the exchange of information on those actions among federal, state, and local government agencies. As part of this process, PLPCO makes use of the Resource Development Coordinating Committee (RDCC). The RDCC includes representatives from the state agencies that are generally involved or impacted by public lands management.

The list of approvals and permits in Section 1.5, Table 1.5-1 is deficient for two approvals. The proponent of this project will need to acquire the necessary permits and approvals for construction across all state-owned lands. Specifically, Utah Division of Wildlife Resources (UDWR) will need to grant a Right-of-Way permit for the pipeline to cross lands owned by the Utah Division of Wildlife Resource on the East Canyon WMA. Furthermore, UDWR will need to receive an approval letter from the U. S. Fish and Wildlife Service (FWS) prior to granting a Right of Way because the East Canyon Wildlife Management Area (WMA) was purchased by UDWR with Wildlife Restoration Act grant funds administered by the U.S. Fish and Wildlife Services (FWS). Before pipeline construction easements can be granted on this WMA, UDWR is required to obtain the approval of the Regional Director, Region 6, FWS, through grant amendments. Since this property was purchased with Wildlife Restoration Acts funding, any proposed uses or impacts on the property must be evaluated to determine if the use materially interferes with, or detracts substantially from, the approved purposes of the WMA.

This project will permanently impact the vegetation on the WMA and throughout the pipeline corridor. Section 5.14 does not address the long-term impacts from the loss of sagebrush and mahogany plants. Both of these species are very slow growing, this area of Morgan County has limited sagebrush winter range and it may be 15 to 50 years before they are fully available as wildlife forage species. This section should address these long-term impacts with additional mitigation requirements and the state requests that a stipulation for mitigation of permanently impacted vegetation be added to Section 5.2.

UDWR is available to assist in the development of a mitigation plan to address these long-term impacts. A mitigation plan could include, but should not be limited to: restoration or enhancement of other similar habitats within this general area, monies provided to the Utah Partners for Conservation and Development for habitat restoration activities, or conservation easements placed on important habitat.

The impacts of the project's operation to upland vegetation in the project corridor are unclear because two statements in Section 4.4.5 appear to be in conflict with each other. First, "During operation, the entire width of the permanent right-of-way would be mowed up to once every 3 years."; second, "it is not expected that mowing would be required on grasslands or rangelands, within open lands, or on agricultural lands; however, maintenance of the permanent pipeline right-of-way may limit restoration of sagebrush and forested habitat." In meetings with the proponent, UDWR was informed that sagebrush will be allowed to re-vegetate the pipeline corridor and would not be mowed. Given the contradictory statements in this section, the state is unclear as to whether sagebrush habitat will be allowed to re-vegetate the corridor. UDWR recommends that sagebrush be allowed to vegetate the right-of-way. UDWR also recommends the reclamation process on re-vegetation in Appendix F be modified such that the amount of yarrow seed is .2 pounds/acre instead of 2 pounds/acre and when drill seeding, the sagebrush and yarrow seed should be broadcast separately from the rest of the seed mixture.

The project will also impact riparian areas and riparian vegetation. Accordingly Section 4.4.2 mentions riparian habitat as one of three areas of special concern. UDWR agrees as 70-80% of wildlife in Utah is directly tied to riparian habitats. However, the section fails to determine or discuss the environmental affects of the project on riparian habitats. Furthermore, although Appendix F contains measures for insuring the soil and stream bank stability of effected riparian areas, it does not contain sufficient plans for reclamation of vegetation. The state recommends that stipulations be added to amend Section 4.4.2 and Appendix E so that mature trees, such as willows, be excavated from nearby areas and placed within the outer edges of the right-of-way stream crossing areas, where trees will be permitted to remain, to assist with channel re-vegetation. Within the stream channel floodplain area and stream banks, UDWR recommends that *Carex spp.* and *Juncus spp.* sod mats be placed to provide bank cover and stability.

The DEIS indicates that wildlife will be impacted by the construction of this project. Kern River states in Section 4.5.2 that during construction escape ramps will be placed in the trench every .25-.50 miles to prevent and mitigate possible entrapment of wildlife. UDWR agrees with this mitigation but also recommends that stipulations be added that amend Section 4.5.2 so that crossover points be placed every .25-.50 miles in crucial big game winter range



areas to allow animals to safely cross over the trench during their daily foraging movements and during migration periods.

Large game hunting is an important use of lands impacted by the construction of this project. It should be noted that the East Canyon WMA property receives high use by hunters since it is one of the only public lands open to hunting within Morgan County. The state requests that stipulations be added to amend Section 4.8.3.5 such that the dates prohibiting construction activities reflect the current year's hunting season. The 2010 general deer rifle season is October 23- October 31.

Small non-game animals with special species status will also be impacted by the project construction and UDWR agrees with FERC's staff recommended additional mitigation for the Yellow-billed Cuckoo in Section 4.7.1.2 and Section 5.2.21. However, UDWR does not agree that one audio survey is sufficient to detect their presence and recommends that the FERC stipulation in Section 5.2.21 be amended such that the surveys are conducted twice, at the same location, at least 1-2 weeks apart.

The impacts of the project's construction on another species of special status, the Northern Leopard Frog is adequately discussed and determined in Section 4.7.1.5. However, the species was not included in the Special Status Species Table 4.7.2.1.

The DEIS indicates the project's construction could impact aquatic animals because the project crosses several water bodies. Specifically in Section 4.7.2 the DEIS suggests mitigation for Bonneville cutthroat trout if they are impacted through UDWR's hatchery program. UDWR does not have a hatchery stocking program for Bonneville cutthroat trout for streams, therefore, the proposed scenario is not possible. UDWR recommends supplementary mitigation, in addition to on-site reclamation/restoration, include habitat restoration elsewhere along the stream channel to improve habitat conditions. UDWR personnel are available to provide more specific recommendations.

The DEIS indicates that water will be withdrawn from November 2010 – October 2011 for hydrostatic testing and dust control in Section 4.3.2.5 and Kern River will "maintain adequate flow rates to protect aquatic life, provide for all water body uses, and provide for downstream withdrawals of water by existing users." Due to insufficient detail, UDWR is concerned that the hydrostatic testing may severely impact fisheries, especially the Bonneville cutthroat trout, in East Canyon Creek and Hardscrabble Creek. Since water demand from irrigation users and water flows vary significantly, the state recommends the proponent carefully consider and plan the timing and duration of the hydrostatic testing. In particular, the state recommends the fisheries in these waters not be inadvertently impacted during the Bonneville cutthroat trout spawning season from March 1<sup>st</sup> to July 15<sup>th</sup>. It should also be noted that during the creation of the East Canyon Dam in 1968, the U. S. Bureau of Recreation authorized a minimum instream flow rate of 5 cfs to exist downstream of the East Canyon Dam. The state recommends that FERC add a stipulation to Section 5.2 that requires the applicant to maintain a minimum flow rate of 5.0 cfs when appropriating water from East Canyon Creek.

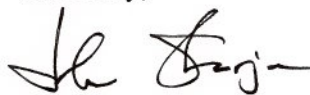
Since East Canyon Creek has been found to contain the New Zealand Mud Snail, an aquatic invasive species (AIS), any water removed from the East Canyon creek drainage must be discharged only within the East Canyon Creek drainage. As such, East Canyon Creek water should not be discharged into the Hardscrabble Creek drainage or any other drainage. UDWR is available to review and provide further comment on any discharge plans once they become available.

Because there is a possibility that this project could introduce an AIS into uninfected waters, UDWR recommends adding the introduction of aquatic invasive species (AIS) into uninfected water bodies as a possible impact to aquatic wildlife in Utah in Section 4.3.2.5. Furthermore, UDWR recommends Section 4.6.2 be expanded to include another possible AIS, the quagga mussel.

Mitigation procedures to preclude the possible spread of AIS are absent in section 2.3.2, Special Pipeline Construction procedures; they are also absent in Appendix E, Wetland and Water Body Construction and Mitigation Procedures. Furthermore, the temperature recommendation of 130 °F in Section 4.6.2 is insufficient for the control of AIS and 140 °F is recommended by Utah's decontamination protocol. UDWR regards the spread of AIS as a serious threat to the wildlife and ecology of Utah water bodies. The state requests FERC amend the stipulations in Section 5.2 to include Kern River's adoption of Utah's decontamination protocol for all equipment that comes into contact with water. The decontamination protocol is available at: <http://wildlife.utah.gov/mussels/decontaminate.php>

The State of Utah appreciates the opportunity to review this proposal and we look forward to working with you as needed to complete this project. Please direct any other written questions regarding this correspondence to the Public Lands Policy Coordination Office at the address below, or call Judy Edwards at (801) 537-9023.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Harja', with a stylized flourish at the end.

John Harja  
Director

cc: Carmen Baily, UDWR